

AMENDED IN ASSEMBLY MAY 27, 2010

AMENDED IN ASSEMBLY MAY 25, 2010

AMENDED IN SENATE APRIL 8, 2010

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1223

Introduced by Senator Calderon

February 18, 2010

An act to add ~~Section~~ *Sections 17202.2 and 17412* to the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1223, as amended, Calderon. Escrow—~~agents; auctions; foreclosures; agents.~~

Existing law, the Escrow Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted from licensure. Under the Escrow Law, a “licensee” is defined as any person holding a valid, unrevoked license as an escrow agent, and an “escrow agent” is defined as any person engaged in the business of receiving escrows for deposit or delivery. A willful violation of the Escrow Law constitutes a crime.

This bill would require a licensed escrow agent and any person acting as an escrow agent who is exempt from licensure under the Escrow Law to return or cause to be returned to the bidder all deposits and fees received from that bidder in connection with an auction sale of real property that has been the subject of a foreclosure sale, upon receipt of escrow instructions from the bidder and auctioneer or auction company

directing the return of all funds placed on deposit by the bidder with that agent or person, except as specified. ~~Because~~

Existing law requires each person licensed under the Escrow Law to establish a bond with the commissioner and to participate as a member of Fidelity Corporation, a nonprofit mutual benefit corporation, established to indemnify its members against loss.

This bill would require the surety or sureties of a bond established by an escrow agent to give notice to the commissioner and to Fidelity Corporation of any release, substitution, cancellation, withdrawal, or nonrenewal of a bond.

Because a willful violation of that provision those provisions would constitute a crime, ~~the~~ this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17202.2 is added to the Financial Code,
2 to read:

3 17202.2. Notwithstanding any other provision of law, the surety
4 or sureties for any bond described in Section 17203 shall give
5 notice to the commissioner and to Fidelity Corporation of any
6 release, substitution, cancellation, withdrawal, or nonrenewal of
7 a bond obtained pursuant to Section 17202.

8 ~~SECTION 1.~~

9 SEC. 2. Section 17412 is added to the Financial Code, to read:

10 17412. (a) An escrow agent shall return to the bidder or cause
11 to be returned to the bidder all deposits and fees received from
12 that bidder in connection with an auction sale of real property that
13 has been the subject of a foreclosure sale, upon receipt of escrow
14 instructions from the bidder and auctioneer or auction company
15 directing the return of all funds placed on deposit by the bidder
16 with that agent. An escrow agent may recognize an auctioneer or
17 auction company as the agent of the property seller for this purpose.

(b) This section shall apply to persons required to be licensed under this division and to those persons exempt from licensure under this division pursuant to Section 17006.

(c) This section shall not apply to any of the following:

(1) A sale of real property pursuant to a nonjudicial foreclosure governed by Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(2) A sale of real property pursuant to a judicial foreclosure governed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(3) A sale conducted pursuant to Section 9604 of the Commercial Code, if an obligation secured by a security interest in personal property or fixtures is also secured by an interest or an estate in real property.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.